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No. 80-803

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

CHARLES E. GREENAWALT, LOCAL UNION NO. 764, TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, TEAMSTERS JOINT COUNCIL NO. 53, AND INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS,

Petitioners,

v.

JOHN A. PAWLAK AND JAMES STAFFORD,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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RESPONDENTS' MEMORANDUM IN OPPOSITION TO THE PETITION

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RESPONDENTS' MEMORANDUM IN OPPOSITION TO THE PETITION

STATEMENT

Four years ago, respondent John Pawlak, a member of petitioner Teamsters Local 764, filed an action against his employer, Interstate Motor Freight System, Inc. Pawlak challenged a change in working conditions that he alleged had been effected in violation of the collective bargaining agreement under which he worked. In order to present his contract claim against Interstate, Pawlak was required by this Court's decision in *Vaca* v.

Sipes, 386 U.S. 171 (1967), to join his local union as a defendant and show that it had violated its duty of fair representation when petitioner Charles E. Greenawalt, the local's president, sanctioned the change against the will of the majority of affected members and failed to process Pawlak's grievance about it. The district court dismissed the suit because it concluded that, on balance, Pawlak's reasons for having failed to exhaust all available internal union procedures before filing suit were insufficient. 444 F. Supp. 807 (M.D.Pa. 1977). The Court of Appeals for the Third Circuit affirmed. 571 F.2d 572 (1978).

Pawlak then attempted to prosecute internal union charges, but, as he had feared, the internal union remedies proved to be futile. His charges were dismissed out of hand by the Local 764 Executive Board. Pawlak reluctantly decided not to pursue his charges or to file a second complaint, because by that time negotiations on the new National Master Freight Agreement were imminent, and the challenged working conditions would either be repealed or frozen into the new contract.

No doubt aware that the American rule permits the award of attorney fees only in limited circumstances, *Alyeska Pipeline Serv. Co.* v. *Wilderness Society*, 421 U.S. 240 (1975), petitioner Local 764 did not apply for such an award. Instead, petitioner Greenawalt drew up internal union charges against Pawlak, accusing him of violating Article XIX, Sections 6(1) and 12 of the IBT Constitution, by suing Local 764 without exhausting internal remedies and causing the union to expend $2,635 in defense.[1] The union imposed a $2,635 fine, and petitioners Joint Council No. 53 and International Brotherhood of Teamsters (hereafter called "IBT") affirmed the penalty.

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[1] Section 12 is set forth in the Petition at pp. 3-4, nn. 3 and 4.

Pawlak and another Local 764 member, respondent James Stafford, then filed this action against petitioners Local 764, Greenawalt, the IBT and Joint Council No. 53.[2] The district court granted plaintiffs' motion for summary judgment on that part of the complaint which sought invalidation of both the fine and the portion of the IBT Constitution which authorized it.[3] Both the district court, in opinions reported at 464 F. Supp. 1265 and 477 F. Supp. 149, and the Court of Appeals for the Third Circuit, which unanimously affirmed in an opinion written by Judge Adams and reported at 628 F.2d 826, used substantially the same analysis.

Both courts noted that 29 U.S.C. § 411(a)(4) forbids unions to limit their members' right to sue, and that the discipline authorized by section 12(b) of the IBT Constitution is such a limit. The courts then rejected the Teamsters' response, that union power to impose fines is necessary to make effective the proviso of section 411(a)(4) allowing courts to require exhaustion. For this decision they relied upon *NLRB* v. *Marine Workers*, 391 U.S. 418 (1968), where this Court ruled that the proviso gives power not to unions, but only to the courts. This reading of *Marine Workers* had been applied to a similar fine, imposed on a union member who sued without having exhausted remedies, by the Court of Appeals for the Ninth Circuit in *Operating Engineers, Local 3* v. *Burroughs*, 417 F.2d 370 (9th Cir. 1969), *cert. denied*, 397 U.S. 916 (1970). The courts below rejected the Teamsters' attempt to distinguish *Burroughs* and *Marine Workers*, and recognized that the Teamsters' basic con-

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[2] Inasmuch as Joint Council No. 53 was dismissed by consent of all parties pursuant to Rule 41, F.R.Civ.P., it is not a proper petitioner in this Court.

[3] Petitioners had previously substantially yielded to respondents' second count, which sought relief against an unlawful use of union resources in a campaign concerning respondents' proposed amendments to the local bylaws. That count is not at issue in this Court.

tention was that *Marine Workers* should be limited for policy reasons.

The District Court and the Court of Appeals reasoned that the Teamsters' argument had its own dangers—it put the union member at risk of discipline should a court require exhaustion in his particular case. They recognized that members already have very substantial incentives to exhaust internal remedies, because dismissals cost time and money, and deny the member the opportunity to present the merits of his grievance. Moreover, they concluded, unions have ample protection against vexatious or harassing lawsuits, including judicial awards of attorneys fees in appropriate cases. Accordingly, they found no reason for limiting *Marine Workers*.

REASONS FOR DENYING THE WRIT

The Teamsters have failed to persuade a single judge that their reading of this Court's decision in *Marine Workers* is correct. Indeed, of all the courts that have considered *Marine Workers* since that case was decided, not a single one has followed the Teamsters' interpretation. *Operating Engineers Local 3* v. *Burroughs*, 417 F.2d 370 (9th Cir. 1969), *cert. denied*, 397 U.S. 916 (1970); *Ross* v. *IBEW*, 544 F. 2d 1022, 1024 (9th Cir. 1976); *Phillips* v. *Ironworkers*, 556 F.2d 939 (9th Cir. 1977); *Lacy* v. *Teamsters Local* 667, No. C-74-454 (W. D. Tenn., April 3, 1978), *aff'd*, 620 F.2d 303 (6th Cir. 1980). *See also Ryan* v. *IBEW*, 361 F.2d 942 (7th Cir.), *cert. denied*, 385 U.S. 935 (1966) (decided before *Marine Workers*); *Parks* v. *IBEW*, 314 F.2d 886 (4th Cir.), *cert. denied*, 372 U.S. 976 (1963); *Roberts* v. *NLRB*, 350 F.2d 427 (D.C. Cir. 1965). Faced with this unanimity of judicial opinion, petitioners seek to persuade this Court that the case is worthy of plenary review by repeating their attempt to distinguish *Marine Workers*, rejected by the Court of Appeals (*see* Petition

7a to 10a), and by seeking to scramble the issue in this case with other questions, not presented here, that the Court may deem worthy of consideration.

Despite petitioners' attempt to make it an issue, the validity of the doctrine that a union member must exhaust internal union remedies—in addition to the grievance procedure set forth in the collective bargaining agreement—before filing an action under section 301 of the Labor-Management Relations Act is not before the Court in this case. That was the issue in Pawlak's earlier suit, which was the basis for the fine; in this case, the parties and the courts below all assumed that the earlier ruling was proper. This case addressed the next question—whether a union may, in addition to obtaining dismissal of the section 301 action, discipline a member for having filed it. The courts below correctly concluded that section 101(a)(4) of the Landrum-Griffin Act, 29 U.S.C. § 411(a)(4), was specifically intended to preclude such discipline.

This Court recently granted certiorari to consider the exhaustion doctrine in *ITT Gilfillian* v. *Clayton*, No. 80-54, and *Clayton* v. *UAW*, No. 80-5049. 49 U.S.L.W. 3332 (Nov. 3, 1980). Obviously, if the Court were to decide in *Clayton* that the internal union exhaustion doctrine is not applicable to section 301 suits, the question whether a union may impose discipline pursuant to that doctrine would never arise. But even a contrary decision in *Clayton*—that is, that the internal exhaustion doctrine is proper in the section 301 context—would in no way disturb the decision of the Court of Appeals in this case.[4]

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[4] The Court's concern in *IBEW* v. *Foust*, 442 U.S. 42 (1979), was not directed to the effects of the cost of litigation, as petitioners state, Pet. at 10, but rather to the effects of punitive damage awards on the delicate balance struck by *Vaca* v. *Sipes*, 386 U.S. 171 (1967). With respect to the former, Archibald Cox, one of the

CONCLUSION

Because the Court of Appeals correctly interpreted *Marine Workers*—indeed, no other court has regarded the Teamsters' position as even a close question—the question presented is not worthy of plenary consideration and the petition for writ of certiorari should be denied.

Respectfully submitted,

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architects of the Landrum-Griffin Act, has noted that the risk of litigation with its attendant costs is simply the price unions, like other litigants, pay for "coming-of-age" as powerful institutions. Cox, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58 MICH.L.REV. 819, 853 (1960).